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## **REMARKS**

Support for the above-requested amendments to claims 1, 5, and 18 is found at least at page 2, lines 21 – 26 and Example 1 at page 7, line 20 – page 8, line 9. Newly added claims 21 – 29 are supported at least by Example 1 at page 7, line 20 – page 8, line 9 and Table 1. Claims 2, 3, 11, 14, 17, and 20 have been canceled. No question of new matter arises and entry of the amendments is respectfully requested.

Claims 1, 4 – 10, 12, 13, 16, and 18 – 29 are before the Examiner for consideration.

## **Claim Objections**

Claim 20 has been objected to because claim 20 is a product claim that depends upon a process claim. In response to this objection, Applicant has canceled claim 20, thereby rendering this objection moot. Accordingly, Applicant respectfully requests that this objection be withdrawn.

## **Rejection under 35 U.S.C. §103(a)**

Claims 1, 2, 4, 8, and 11 – 14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reck (U.S. Patent No. 6,099,773) in view of Dockrill (U.S. Patent No. 5,035,936). In particular, the Examiner asserts that Reck discloses a composition for a binder system that includes a polymer (*e.g.*, polyacrylic acid), a crosslinking agent (*e.g.*, triethanolamine), and a surfactant (*e.g.*, ethylene oxide/propylene oxide copolymers). In addition, the Examiner asserts that Reck discloses a solids content of 44.5 – 50%. The Examiner admits that Reck does not disclose the addition of a mineral oil to the composition. In this regard, the Examiner cites Dockrill for teaching the addition of a mineral oil as a retention additive. The Examiner asserts that mineral oils act as a suppression or retention

agent when incorporated into a composition that includes glass fibers. Thus, the Examiner concludes that it would have been obvious to one of skill in the art to utilize a mineral oil in the composition of Reck and thereby obtain the claimed invention.

Applicant respectfully traverses this rejection in view of the following remarks.

With respect to the rejection of claims 1 and 4, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 1 and submits that claim 1, as amended, defines a fiberglass binder composition that is not taught or suggested within Reck and/or Dockrill. Reck discloses a method for forming shaped products that by mixing an aqueous binder composition with fibers or chips to form a shaped article. (*See, e.g., the Abstract*). The aqueous binder contains a free-radically polymerized polymer and an alkanolamine (*e.g., triethanolamine*). (*See, e.g., column 2, lines 1 – 8 and column 7, lines 35 – 54*). Reck teaches that the preferred monomers in the polymer are acrylic acid, methacrylic acid, ethane, acrylamide, styrene, and acrylonitrile, (*See, e.g., column 3, lines 42 – 50*). An anionic, nonionic, cationic, or amphoteric emulsifier may be added to stabilize the polymer in the composition. (*See, e.g., column 6, lines 9 – 14*) Although Reck discloses an aqueous binder composition, Reck does not teach or suggest the fiberglass insulation binder composition as claimed in independent claim 1. For example, Reck does not teach or suggest a fiberglass binder composition that contains a surfactant in an amount sufficient to control the surface tension to less than the surface tension of an equivalent weight percent solids phenolic binder as claimed in amended claim 1. As a result, independent claim 1 cannot be anticipated by, or be obvious over, Reck. Furthermore, Dockrill adds nothing to the teachings of Reck to meet the features of the invention as set forth in amended claim 1. Thus, claim 1, and all claims dependent therefrom (*e.g., claim 4*), are not anticipated by, or obvious over, Reck and/or Dockrill.

With respect to the rejection of claims 8 and 11 – 14, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 5 and respectfully submits that none of the Examiner's cited references teach or suggest the process for producing a fiberglass insulation binder as presently claimed. In particular, Applicant submits that neither Reck nor Dockrill teach or suggest a process for producing a fiberglass insulation binder that includes the steps of (1) preparing a mixture of a polycarboxy polymer, a polyhydroxy crosslinking agent, water, and a surfactant present in an amount sufficient to control the surface tension of the binder to less than approximately 66 dyne/cm, and (2) blending the mixture as claimed in amended independent claim 5. Because Reck and Dockrill do not teach or suggest the process for forming a fiberglass insulation binder that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than about 66 dyne/cm as claimed in amended claim 5, the combination of Reck and Dockrill cannot result in the presently claimed invention. Furthermore, Dockrill adds nothing to the teachings of Reck to meet the features of the invention as set forth in independent claim 5. Because claims 8 and 11 - 14 are dependent on claim 5, which is neither taught nor suggested by Reck, and because Dockrill does not make up for the deficiencies of Reck, Applicant submits that the combination of the Examiner's cited references neither teaches nor suggests the presently claimed invention. Thus, independent claim 5, and all claims dependent therefrom, are non-anticipatory, non-obvious, and patentable.

Moreover, Applicant submits that there is no motivation for one of skill in the art to arrive at the inventions claimed in independent claims 1 and 5 based on the disclosures of the cited references. Motivation to combine references must come from the teachings of the prior art, the nature of the problem being solved by the references being combined, or the knowledge of one of ordinary skill in the art. There is simply no motivation from any of

these sources to arrive at a fiberglass insulation binder that contains a surfactant in an amount sufficient to control the surface tension to less than the surface tension of an equivalent weight percent solids phenolic binder (claim 1) or a process for forming a fiberglass insulation binder that includes a surfactant in an amount sufficient to control the surface tension of the binder to less than about 66 dyne/cm (claim 5). Accordingly, Applicant respectfully submits that independent claims 1 and 5, and all claims dependent therefrom, are patentably distinguishable over Reck and Dockrill.

In view of the above, Applicant submits that the present invention is not anticipated by, or obvious over, Reck and/or Dockrill and respectfully requests that this rejection be reconsidered and withdrawn.

**Rejection under 35 U.S.C. §103(a)**

Claims 16, 17, and 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936) in view of Arkens *et al.* (U.S. Patent No. 5,763,524). The Examiner cites Arkens *et al.* as teaching a binder composition that includes a polyacid (*e.g.*, polyacrylic acid) and a polyol curing agent (*e.g.*, glycerol). The Examiner asserts that additives include emulsifiers and organosilanes. In addition, the Examiner asserts that in order for the composition to be useful as heat insulation, the fibers would have to withstand high temperatures. Further the Examiner asserts that Arkens discloses that such temperatures have to be above 125 °C. The Examiner concludes that it would have been obvious to one of skill in the art to utilize the binder of Reck in the disclosure of Arkens and thereby obtain the claimed invention.

Applicant respectfully traverses this rejection in view of the following remarks.

With respect to claim 17, Applicant has canceled this claim, thereby rendering the rejection to this claim moot.

With respect to claim 16, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 5 and the argument set forth above with respect to the rejection of claims 8 and 11 – 14 over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936). As discussed above, amended claim 5 defines a process for forming a fiberglass insulation binder that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than about 66 dyne/cm. Such a feature is neither taught nor suggested within Reck and/or Dockrill. Moreover, Arkens *et al.* adds nothing to the teachings of Reck or Dockrill to meet the features of the invention as set forth in amended claim 5. Therefore, Applicant respectfully submits that amended independent claim 5 is patentably distinguishable over Reck, Dockrill, and/or Arkens *et al.*, either alone or in combination. Because claim 16 is dependent upon claim 5, which is not taught or suggested within the cited references, Applicant submits that claim 16 is also not taught or suggested within Reck, Dockrill, and/or Arkens *et al.*, either alone or in combination. Furthermore, claim 16 adds structural features that further define Applicant's invention over the cited references. As such, claim 16 is non-obvious and patentable.

With respect to claim 19, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 18 and respectfully submits that none of the Examiner's cited references teach or suggest a process for manufacturing a fiberglass insulation product as presently claimed. In particular, Applicant submits that neither Reck, Dockrill, nor Arkens *et al.* teach or suggest a process for manufacturing a fiberglass insulation product that includes the step of applying a binder composition that contains a polycarboxy polymer, a polyhydroxy crosslinking agent, water, and a surfactant present in an

amount sufficient to control the surface tension to less than the surface tension of an equivalent weight percent solids phenolic binder to glass fibers, as claimed in amended independent claim 18. Because Reck, Dockrill, and Arkens *et al.* do not teach or suggest the process for manufacturing a fiberglass insulation product that includes adding a binder composition that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than the surface tension of an equivalent weight percent solids phenolic binder as claimed in amended claim 18, the combination of Reck, Dockrill, and/or Arkens *et al.* cannot result in the presently claimed invention. Because claim 19 is dependent on claim 18, which is neither taught nor suggested by Reck, Dockrill, and/or Arkens *et al.*, Applicant submits that the combination of the Examiner's cited references neither teaches nor suggests the presently claimed invention. Thus, independent claim 18, and all claims dependent therefrom, are non-anticipatory, non-obvious, and patentable.

Moreover, Applicant submits that there is no motivation for one of skill in the art to arrive at the invention claimed in independent claim 18 based on the disclosures of the cited references. Motivation to combine references must come from the teachings of the prior art, the nature of the problem being solved by the references being combined, or the knowledge of one of ordinary skill in the art. There is simply no motivation from any of these sources to arrive at a process for manufacturing a fiberglass insulation product that includes a step of adding a binder composition that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than the surface tension of an equivalent weight percent solids phenolic binder to glass fibers. Accordingly, Applicant respectfully submits that independent claim 18, and all claims dependent therefrom (*e.g.*, claim 19), are patentably distinguishable over Reck, Dockrill, and/or Arkens *et al.*

In view of the above, Applicant submits that the present invention not anticipated by, or obvious over, Reck, Dockrill, and/or Arkens *et al.* and respectfully requests that the Examiner reconsider and withdraw this rejection.

**Rejection under 35 U.S.C. §103(a)**

Claims 15, 16, and 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936) in view of Reck (U.S. Patent No. 6,348,530). The Examiner cites Reck '530 as teaching a binder composition for glass fibers that includes a polyacid and a polyhydroxylated amine. The Examiner asserts that the composition can be used as an insulating material such as a dust suppressant, coupling agents such as alkoxysilanes, lubricants, emulsifiers, and wetting agents. In addition, the Examiner asserts that fibers utilized with the binder disclosed by Reck '530 would form an article that can be used in roofing or insulation. The Examiner concludes that it would have been obvious to one of skill in the art to utilize the glass fibers of Reck '530 with the binder of Reck '773 and thereby obtain the present invention.

With respect to claim 15, Applicant respectfully submits that this claim was canceled in the Amendment filed September 8, 2003. Therefore, the rejection to this claim is moot.

With respect to the rejection of claim 16, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 5 and to the argument set forth above with respect to the rejection of claims 8 and 11 – 14 over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936). As discussed above, neither Reck '773 nor Dockrill teach or suggest a process for forming a fiberglass insulation binder that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than about 66 dyne/cm. Applicant submits that Reck '530 adds nothing to the teachings of Reck



'773 or Dockrill to meet the features of the invention as set forth in amended claim 5.

Therefore, Applicant respectfully submits that amended independent claim 5 is patentably distinguishable over Reck '773, Dockrill, and/or Reck '530, either alone or in combination. Because claim 16 dependent upon claim 5, which is not taught or suggested within the cited references, Applicant submits that claim 16 is also not taught or suggested within Reck '773, Dockrill, and/or Reck '530, either alone or in combination. As such, claim 16 is non-obvious and patentable.

With respect to claim 19, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 18 and respectfully submits that none of the Examiner's cited references teach or suggest a process for manufacturing a fiberglass insulation product as presently claimed. In particular, Applicant submits that neither Reck '773, Dockrill nor Reck '530 teach or suggest a process for manufacturing a fiberglass insulation product that includes applying a binder composition including a polycarboxy polymer, a polyhydroxy crosslinking agent, a surfactant present in an amount sufficient to control the surface tension to less than the surface tension of an equivalent weight percent solids phenolic binder, and water to glass fibers, as claimed in amended independent claim 18. Because Reck '773, Dockrill, and Reck '530 do not teach or suggest the process for manufacturing a fiberglass insulation product that includes adding a binder composition that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than the surface tension of an equivalent weight percent solids phenolic binder as claimed in amended claim 18, the combination of Reck '773, Dockrill, and/or Reck '530 cannot result in the presently claimed invention. Because claim 19 is dependent on claim 18, which is neither taught nor suggested by Reck '773, Dockrill, and/or Reck '530, Applicant submits that the combination of the Examiner's cited references neither teaches nor suggests

the presently claimed invention. Thus, independent claim 18, and all claims dependent therefrom (*e.g.*, claim 19), are non-anticipatory, non-obvious, and patentable.

In view of the above, Applicant submits that the present invention not anticipated by, or obvious over, Reck '773, Dockrill, and/or Reck '530 and respectfully requests that this rejection be reconsidered and withdrawn.

**Rejection under 35 U.S.C. §103(a)**

Claims 9 and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936) in view of Schell (U.S. Patent No. 5,646,207). Schell is cited for teaching glass fibers pretreated with a silane coupling agent. The Examiner asserts that coupling agents couple the fibers to the binder, *i.e.*, the coupling agent increases the adhesion between the fibers and a binder in a composition. The Examiner concludes that it would have been obvious to one of skill in the art to utilize the coupling agent of Schell in the composition of Reck and thereby obtain the claimed invention.

In response to this rejection, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 5 and the argument set forth above with respect to the rejection of claims 8 and 11 – 14 over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936). As discussed above, amended claim 5 defines a process for forming a fiberglass insulation binder that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than about 66 dyne/cm, which is not taught or suggested within either Reck or Dockrill. Applicant submits that Shell adds nothing to the teachings of Reck or Dockrill to meet the features of the invention as set forth in amended claim 5. Thus, Applicant respectfully submits that amended independent claim 5 is

patentably distinguishable over Reck, Dockrill, and/or Schell, either alone or in combination. Because claims 9 and 10 are dependent upon claim 5, which is not taught or suggested within the Examiner's cited references, Applicant submits that claims 9 and 10 are also not taught or suggested within Reck, Dockrill, and/or Schell, either alone or in combination. Therefore, claims 9 and 10 are non-obvious and patentable.

In view of the above, Applicant submits that the present invention not anticipated by, or obvious over, Reck, Dockrill, and/or Schell and respectfully requests that the Examiner reconsider and withdraw this rejection.

**Rejection under 35 U.S.C. §103(a)**

Claims 9 and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936) in view of Arkens *et al.* (U.S. Patent No. 5,763,524) as applied to claims 1, 2, 4 – 8, 13, 14, 16, 17, and 19 above, and further in view of Schell (U.S. Patent No. 5,646,207). The Examiner asserts that Schell discloses a polycarboxy polymer

In response to this rejection, Applicant respectfully directs the Examiner's attention to the amendments made to independent claim 5 and the argument set forth above with respect to the rejection of claims 8 and 11 – 14 over Reck (U.S. Patent No. 6,099,773) and Dockrill (U.S. Patent No. 5,035,936). As discussed above, amended claim 5 defines a process for forming a fiberglass insulation binder that contains a surfactant in an amount sufficient to control the surface tension of the binder to less than about 66 dyne/cm, which is not taught or suggested within either Reck or Dockrill. Neither Arkens *et al.* nor Shell add anything to the teachings of Reck or Dockrill to meet the features of the invention as set forth in amended claim 5. Therefore, Applicant respectfully submits that amended independent claim 5 is

patentably distinguishable over Reck, Dockrill, Arkens *et al.* and/or Schell either alone or in combination. Because claims 9 and 10 are dependent upon claim 5, which is not taught or suggested within the Examiner's cited references claims 9 and 10 are non-obvious and patentable.

In view of the above, Applicant submits that the present invention not anticipated by, or obvious over, Reck, Dockrill, Arkens *et al.*, and/or Schell and respectfully requests that this rejection be reconsidered and withdrawn.

### CONCLUSION

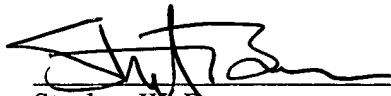
In light of the above, Applicant believes that this application is now in condition for allowance and therefore requests favorable consideration.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 50-0568 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

Date: 3 JUNE 2004

  
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November 26, 2003

Inger H. Eckert  
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*Via Facsimile and U.S. Mail*  
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Re: **Chen U.S. Patent Application No. 09/871,467**  
**(U.S. Patent Publication No. 2002/018805)**

Dear Ms. Eckert:

Thank you for your letter of November 14, 2003. As a threshold matter, we do not think there is anything improper about our filing our continuation case, given that Mr. Dobrowolski, an employee of Rohm and Haas, was at the very least a co-inventor of subject matters set forth in the captioned patent application, according to our best understanding of the facts. Filing our continuation is the only way for us to preserve any rights that we might have, as you probably realize. Giving Owens Corning the benefit of the doubt, we believe it is operating under a misunderstanding of the inventorship facts, some of which might not be known to you personally, for example.

**REDACTED**

We presently have a another proposal for you to consider: namely, abandoning your case in light of the prior art (U.S. Patent No. 6,071,994 to Hummerich et al.; Exhibit A) we recently found. A summary of that Section 102 art applied to the pending claims in your application is attached (Exhibit B). After you review this, we would be very interested in ascertaining from you what

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Director, Intellectual Property  
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patentable subject matter, if any, you believe remains in your application in light of this art.

REDACTED

We believe this is a reasonable proposal under these circumstances.

As soon as we get a serial number and a confirmed Examiner assignment in our case, we will be citing Hummerich to the Examiner, and providing a copy of this letter and our attached analysis (Exhibit B). We suggest you provide both to the Examiner in your case much sooner, consistent with the duty of candor, if you choose to continue prosecution of your case. Citing our letter and analysis would ensure that the Examiner would not inadvertently overlook the relevance of this new art brought to her attention late in prosecution and possibly in the haste of allowing your case at year's end. It is a fairly long patent to read, after all. Our analysis would facilitate her review and consideration of this art. At least out of courtesy if not candor, you should provide it to her.

We also think that our Section 102(f) issue is a matter Owens Corning should inform the Examiner about, given that it is material information that an Examiner should know in examining your application for patentability.

Also, Owens Corning should be considerably more forthcoming to the Examiner about what we understand to be a long historical use of mineral oil as a dust suppressant in connection with fiberglass insulation production, including insulation made with binders. Our understanding is that Owens Corning and other insulation manufacturers have for years used dust suppression oils as a common practice in this industry, to reduce or eliminate the obvious and long-understood health hazards associated with airborne fiberglass particles. For example, the International Programme on Chemical Safety, Environmental Health Criteria, World Health Organization 1988 stated: "MMMF [Man-made mineral fibers] usually contain a binder and mineral oil as a dust suppressant." (see Exhibit C, p. 6).<sup>1</sup> Also Hummerich characterizes mineral oil as a "customary" additive substance in fiberglass to suppress dust (see col. 10, lines 46-53). Indeed, when Mr Dobrowolski gave Owens Corning his surfactant-containing binder, that was his understanding. How could it not have been? Because of the paucity of art cited by Owens Corning, the file history in your case does not reflect that the Examiner has become aware of this apparent long standing customary industry practice. We plan to explain this to her in the near future in our case, and suggest you do likewise – and fully with all the art in Owens Corning's possession (including but not limited to the full extent of Corning's own Section 102(b) commercial practices) to show precisely and with clarity how common and long term this

<sup>1</sup> A full copy is available at <http://www.inchem.org/documents/ehc/ehc/ehc77.htm>.

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commercial practice has been. Indeed, because we don't manufacture fiberglass, Owens Corning is in a much better position than we are to explain to the Examiner how common and extensive this practice has been.

This apparent long customary industry practice has bearing, among other things, on the relevance of Reck U.S. Patents Nos. 6,099,773 and 6,348,530 as potential Section 102 (as opposed to Section 103) prior art. If the use of dust suppressant agents is as common as we believe (see, e.g., Exhibit C, U.S. Patent No. 5,108,798 and Owens Corning's own patent filings including U.S. Patents Nos. 4,542,044, 4,909,817 and 5,624,742), we posit that the reader of Reck would read his patent as teaching the practice of what is disclosed by him in the intended environment, namely, with necessary and usual additives such as dust suppressants that most -- if not every -- responsible fiberglass manufacturer has to use.<sup>2</sup> We are rather surprised that Owens Corning, given its obvious knowledge of the ubiquitous use of dust suppressant oils in prior art commercial practices, has not been forthcoming about this to the Examiner as of yet, unless, of course, we are somehow factually mistaken about these practices.

Indeed, if our understandings are correct and Owens Corning were more forthcoming about dust suppressant agents, we believe that even Owens Corning would agree that it would not be able persuasively to state a case of patentability of its currently pending claims over Reck. Your prosecution history has left an impression -- rightly or wrongly -- that Owens Corning by its silence to the Examiner about this matter is prepared to permit her to allow claims over Reck due simply to the addition of a dust-suppressant agent that Owens Corning knows to be long-standing industry standard practice that Reck and readers of Reck obviously knew and would employ with Reck's ideas as a matter of course practicing what Reck otherwise expressly taught. If our understandings about dust suppression are correct, Reck apparently felt it unnecessary to mention the usual, customary practices. It's human nature sometimes -- and maybe more so with scientists and engineers -- not to state the obvious and self-evident.

In response to this letter, we would like you to correct and to explain in detail why our understandings about dust suppression agents might be inaccurate, or advise us if we are correct. Such an explanation or advice, for example, might be helpful to our decision about what we should do about the continuation application that we filed. If our understandings are correct, your own careful consideration of this issue may provide Owens Corning an additional reason to respond favorably to our current proposal.

One final matter: you should advise the Examiner of the existence of our commonly owned co-pending application. Copies of the filing papers are enclosed with the confirmation copy of this letter. Because we copied the pending claims in your application (with a few corrections in claim dependency that you probably want to make as well), this raises an issue of patentability

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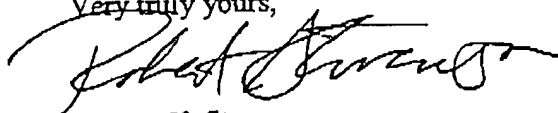
<sup>2</sup> We have found, for example, that oil companies have long marketed oils for the use in the manufacture of fiberglass insulation (see, e.g. the 76 Lubricants Company "Steaval D" brochure attached as Exhibit D). Owens Corning -- and its inventors -- probably have a fair amount of similar prior art commercial literature in their files like this one. A full citation of such commercial literature is in order in your prosecution. We suggest you search Owens Corning's files for such relevant information.

Inger H. Eckert  
Director, Intellectual Property  
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under Section 101 of which the Examiner should be made aware in connection with your prosecution.

We look forward to hearing from you in the very near future with your reply to our current proposal and to the other points in this letter. We remain, as we have been, willing to cooperate with you in reaching a reasonable resolution of this matter. We think our current proposal represents a way for us to move forward, and to put these unfortunate misunderstandings behind us.

Very truly yours,



Robert W. Stevenson  
Senior Patent Counsel

RWS/jal  
Enclosures